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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/092,791	06/05/1998	MATTHIAS EICHSTAEDT	AM9-98-023	6514
22462	7590	11/16/2005	EXAMINER	
GATES & COOPER LLP HOWARD HUGHES CENTER 6701 CENTER DRIVE WEST, SUITE 1050 LOS ANGELES, CA 90045			KANG, PAUL H	
			ART UNIT	PAPER NUMBER
			2141	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/092,791	<b>Applicant(s)</b> EICHSTAEDT ET AL.	
	<b>Examiner</b> Paul H. Kang	<b>Art Unit</b> 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1, 15, 27 and 40-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1, 15, 27, 42-48, 51-57 and 60-66 is/are rejected.
- 7) ☐ Claim(s) 40, 41, 49, 50, 58 and 59 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 June 1998 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### **DETAILED ACTION**

1. In view of the appeal brief filed on July 8, 2005, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.

### ***Status of Claims***

2. Claims 2-14, 16-26, and 28-39 have been cancelled. Claims 1, 15, 27 and 40-66 are now pending. Claims 40, 41, 49, 50, 58 and 59 are objected to. Claims 1, 15, 27, 42-48, 51-57 and 60-66 are rejected below.

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***Allowable Subject Matter***

3. Claims 40, 41, 49, 50, 58 and 59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 15, 27, 42-48, 51-57 and 60-66 are rejected under 35 U.S.C. 102(e) as being anticipated by Klug et al., US Pat. No. 5,996,007.

5. As to claims 1, 15 and 27, Klug discloses a method and apparatus for alleviating problems associated with delays in accessing data on network (See Klug, Summary of the Invention, col. 1, line 62 – col. 3, line 67), comprising the steps of:

a) accessing data on a network from a client computer (Klug teaches loading web pages, see specifically col. 2, line 63 – col. 3, line 16);

b) identifying when a sufficient delay occurs during the accessing step (Klug, col. 3, lines 40-59. See also, col. 2, line 63 – col. 3, line 16; and col. 7, line 34 – col. 8, line 39); and

c) presenting filler contents on the client computer during the identified sufficient delay (Klug, col. 7, line 34 – col. 8, line 39 and col. 8, lines 40-53).

6. As per claims 42, 51 and 60, Klug teaches a method, apparatus and computer program carrier wherein the filler contents are provided by the server computer (Klug, col. 5, line 45 – col. 6, line 4).

7. As per claims 43, 52 and 61, Klug teaches a method, apparatus and computer program carrier wherein the filler contents are selected by the server computer (Klug, col. 5, line 45 – col. 6, line 4 and col. 6, lines 22-62).

8. As per claims 44, 53 and 62, Klug teaches a method, apparatus and computer program carrier wherein the filler contents are directly related to the accessed data or the user's transaction or session (Klug, col. 5, line 45 – col. 6, line 4 and col. 7, line 33 – col. 8, line 5).

9. As per claims 45, 54 and 63, Klug teaches a method, apparatus and computer program carrier wherein presenting of the filler contents do not interrupt the accessing of the data (Klug, col. 5, line 45 – col. 6, line 21 and col. 8, lines 40-52).

10. As per claims 46, 55 and 64, Klug teaches a method, apparatus and computer program carrier wherein the filler contents are presented while the accessing of the data continues (Klug,

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col. 8, lines 6-52. See also, col. 2, line 63 – col. 3, line 16 and col. 5, line 45 – col. 6, line 21).

11. As per claims 47, 56 and 65, Klug teaches a method, apparatus and computer program carrier wherein, if the presenting of the filler contents completes before the accessing of the data completes, new filler contents are presented (Klug, col. 3, lines 40-59; col. 5, line 45 – col. 6, line 53 and col. 8, lines 6-52).

12. As per claims 48, 57 and 66, Klug teaches a method, apparatus and computer program carrier wherein, if the accessing of the data completes before the presenting of the filler contents completes, the presenting of the filler contents is terminated (Klug, col. 2, line 63 - col. 3, line 59; col. 5, line 45 – col. 6, line 21 and col. 8, lines 6-52).

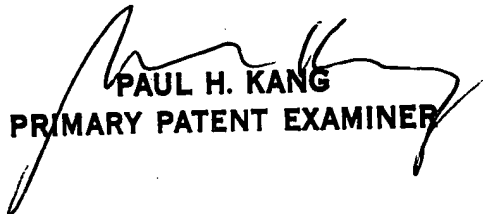
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul H. Kang whose telephone number is (571) 272-3882. The examiner can normally be reached on 9 hour flex. First Friday.

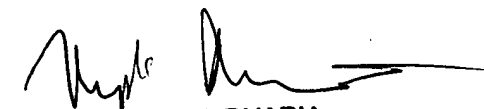
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**PAUL H. KANG**  
**PRIMARY PATENT EXAMINER**



**RUPAL DHARIA**  
**SUPERVISORY PATENT EXAMINER**